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No. 93-163

In The

Supreme Court of the United States

October Term, 1993

JAMES E. SMITH,

Petitioner,

vs.

THE CITY OF DEL MAR,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeal, Fourth Appellate District, Division One State of California

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Respondent City of Del Mar ("Del Mar") objects to Question No. 1 presented to this Court for review, on the ground that it improperly goes beyond the scope of review. Question No. 1 seeks to challenge for the first time in this Court the merger statute itself, enacted by the Legislature, and not the enforcement of Respondent Del Mar's ordinance.

Although Question No. 2 presented for review asks this Court to find, contrary to the California Court of Appeal, that Del Mar's zoning of his property amounted to "spot zoning," Petitioner James E. Smith ("Smith") offers no supporting argument for this question. Del Mar therefore respectfully requests that this Court refrain from making any findings concerning this question.

Question No. 3 presented for review concerns the propriety of the vote for dissolution of the Del Mar Civic Association after its reconveyance of property to its members according to their individual property shares. Smith challenges the Association's award of one vote for Smith's one approximately twenty-acre lot. Similar to Question No. 1, this issue against Del Mar Civic Association was raised for the first time in this Court. Del Mar Civic Association is not a party herein. As in Question No. 2, no supporting argument is offered by Smith. Del Mar therefore asks this Court to disregard this question.

Despite the questions presented, in his brief Smith appears to have limited the questions for review to a single issue; he asks this Court's reversal of the California Court of Appeal's holding that Del Mar's merger of the twenty lots was not a "taking" requiring compensation under the Fifth Amendment.

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT OF THE CASE

In December of 1977, Petitioner James E. Smith (hereafter "Smith") purchased approximately twenty acres of real property located in the City of Del Mar (hereafter "Del Mar"). The twenty acres consisted of one developed legal parcel. Prior to Smith's purchase, the subject property had consisted of twenty lots, which had been merged in April of 1977 pursuant to then California Government Code § 66424.2. The lots were merged because the subject property contained contiguous, commonly-owned, undeveloped, substandard-sized lots, consistent with the Section's

provisions. Smith was aware of the property's single-parcel merged status at the time of purchase. After purchase, Smith claimed Del Mar's merger was invalid and that he was entitled to compensation for a "temporary taking" of the subject property during the period the allegedly invalid merger was in effect. The merger was released in 1985 by Del Mar pursuant to Smith's request, but Smith did not file his complaint until September of 1987. (Petitioner Smith's Appendix ("App.") N-1). Nor did Smith ever file with Del Mar any meaningful applications for development of the property during the entire time he has owned the property.

After some 35 days of trial, the trial court determined that no taking of Smith's property had occurred.

An appeal by Smith followed. Based on its careful interpretation of legislation concerning mergers of real property and its application of the law concerning regulatory takings of property to the facts found by the trial court (App. E-7-26), the Court of Appeal concluded that not only had Smith's property been validly merged, but that Respondent Del Mar had not taken Smith's property without just compensation, either through the merger or through zoning regulations. The Court of Appeal also upheld the trial court's determination that Del Mar was not liable to Smith for any alleged failure to advise the Del Mar Civic Association that he had twenty votes, rather than the one vote the Association decided he had. (App. E-26-27). The Court of Appeal rejected Smith's claim that if he had been accorded twenty votes instead of one, a different outcome would have resulted in the Association's vote conveying to Del Mar certain beach land in which Smith claimed an interest.

REASONS FOR DENYING THE WRIT

I.

A PETITION FOR SUPREME COURT REVIEW SHOULD BE DENIED WHERE THERE IS NO CONFLICT WITH APPLICABLE DECISIONS OF THE SUPREME COURT.

Rule 10 of the Rules of the Supreme Court provides in Section 10.1 that one of the reasons for granting a writ of certiorari is that "a state court . . . has decided a federal question in a way that conflicts with applicable decisions of this Court."

Smith relies on that consideration in bringing his petition for review, claiming a conflict with *Lucas v. South Carolina Coastal Council*, __ U.S. __, 112 S. Ct. 2886 (1992). As is set forth below, there is no conflict with the holding in *Lucas* nor any other decision of this Court.

A. *Lucas* Is Not Dispositive.

Del Mar respectfully submits that this Court's recent decision in *Lucas* does not mandate reversal, as Smith claims. Smith urges that the Court of Appeal incorrectly read and applied *Lucas* and its predecessor cases concerning the circumstances under which regulations become confiscatory and require compensation. The Court of Appeal reviewed substantial evidence, including more than twenty volumes of Reporter's Transcripts, six volumes of Clerk's Transcripts and "numerous" exhibits. (App. E-26, n. 7). The court then determined that there had been no taking under the "regulatory taking" line of cases, because Smith had not been deprived of all economically beneficial use of his property — the one merged lot he had originally purchased, which he was not prevented from re-subdividing, and which he had marketed and lived on as a single parcel — and because Smith failed to show that a legitimate state interest had not been substantially advanced.

(App. E-19-20 and E-26). This finding was consistent with both the letter and the spirit of *Lucas, supra.*

In *Lucas*, as was shown in footnote 9 on page 2896, this Court based its decision upon "the same factual assumptions as did the Supreme Court of South Carolina", that is, that Lucas' property had been "rendered valueless by respondent's enforcement of the coastal-zone construction ban." *Id.* at 2896. No such factual assumptions were made by the trial court herein; to the contrary, it found that at all times there *was* economically viable use of Smith's property.

Despite the completely different factual backgrounds of *Lucas* and the case at bench, the Court of Appeal considered the direction provided by *Lucas* (App. at E-15-16 and E-19-20) in reaching the conclusion that "the merger did not result in a taking which deprived SMITH of 'all economically beneficial or productive use of land' . . . ." (App. at E-19). The appellate court relied on the trial court's findings of fact to reject Smith's argument that he had been deprived of "all economically beneficial or productive use of land." The trial court's findings essentially established or permitted reasonable inferences that Smith acquired the property as a whole, marketed the property as a whole at all times during the time the merger was on the property, enjoyed the property as his own residence and was not limited through the merger to using his property as a single building site because he could have sought a new subdivision. (App. at K-8-10). Further,

> there was *no* finding the City was at all times intending to acquire the SMITH property for park purposes, was intentionally thwarting SMITH's efforts to develop his property or that the City was engaging in any unreasonable delay in initiating condemnation. (Emphasis added.)

(App. at E-19).

The Court of Appeal thus found that this was not a *Lucas* situation where restrictive regulations had been enacted after the property owner acquired the property, and a construction ban had been enforced which would have deprived Lucas of "*all* economically beneficial uses . . . ." (Emphasis in original.) *Id.* at 2895. The *Lucas* decision in particular noted the need to inquire into whether the "proscribed use interests" were a "part of [the property owner's] title to begin with." 112 S. Ct. at 2899. No twenty-lot subdivision rights were a part of Smith's rights "to begin with", as he bought only a single parcel. The Court of Appeal's decision is consistent with this Court's holding in *Lucas, supra. Lucas* does not mandate reversal.

B. The Trial Court Did Not Conduct A Balancing Test; It Found Del Mar's Actions Substantially Advanced Legitimate Governmental Interests, Contributing To Its Finding That No Taking Occurred.

Smith paradoxically claims first that "the court(s) below failed to properly weigh private and public interests" (Petitioner's Petition for Writ of Certiorari ("Pet."), at 10) and then that no such "balancing" test is applicable to a "takings" claim (Pet. at 11). This Court has on numerous occasions stated that in order to demonstrate a "taking," the landowner must show either that the non-possessory regulation was enacted for an illegitimate purpose or that the legitimate purpose for which it was enacted is not being achieved. In *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677 (1987), the Supreme Court observed that:

> Our cases have not elaborated on the standards for determining what constitutes a "legitimate state interest" . . . They have made clear, however, that a broad range of governmental purposes and regulations satisfies these requirements.

Id. at 834-835. Among those legitimate state interests, according to the holding in *Nollan*, are scenic zoning, residential zoning and landmark preservation:

> *Agins v. Tiburon* [447 U.S. 255 (1980)] at 260-262 . . . (scenic zoning); *Penn Central Transportation Co. v. New York City* [438 U.S. 104 (1978) . . . (landmark preservation); *Euclid v. Ambler Realty Co.* 272 U.S. 365 . . . (1926) (residential zoning) . . . .

Nollan, supra, at 835.

The above rules were unaffected by *First English Evangelical Lutheran Church v. Los Angeles ("First Lutheran I")*, 482 U.S. 304, 107 S. Ct. 2378, 96 L. Ed. 2d 250 (1987). The *First Lutheran I* decision stated that money damages were a constitutionally required remedy if there had been a temporary taking of all use of the property. *Id.* at 2385-2389. Upon remand, the Court of Appeal held that the actual interim ordinance was reasonable in purpose, duration and scope and thus did not constitute a temporary taking. *First English Evangelical Lutheran Church v. County of Los Angeles ("First Lutheran II")*, 210 Cal. App. 3d 1353, *cert. denied*, 493 U.S. 1056 (1989).

Here, the trial court specifically found a legitimate purpose behind the merger doctrine:

> The court finds that one of the compelling reasons for mergers to occur was to consolidate yet undeveloped lands existing under ancient and outdated subdivisions which took no account of the relevant considerations in modern subdivision analysis (slope, grade, soils analysis, density, ecology, and

> environmental concerns, drainage, aesthetics, access, and easements are only some of such concerns). (App. K-9).

Thus, a legitimate governmental purpose was furthered by the recordation of the Notice of Merger; no "taking" therefore occurred.

C. Smith Had No "Bundle" Of Rights To Be Destroyed; His Expectation Could Only Have Reasonably Been As To A Single Piece Of Property.

Smith urges that he was entitled to an expectation of twenty lots, not the single parcel he purchased with full knowledge of the merger. The Court of Appeal rejected that argument, noting that Smith was claiming some fundamental "vested right" to the original subdivision of twenty lots, which was not applicable under these circumstances. (App. E-25). The appellate court cited Smith's purchase of the already-merged property and his failure to perform substantial work or incur substantial liability in reliance on the original subdivision as indicia of the non-applicability of the "vested right" doctrine. (App. E-25). Smith therefore had no "bundle of rights" to be destroyed.

Lucas, supra, also supports the conclusion that no "bundle of rights" was destroyed by the merger. This Court noted that the expectations to which the property owner is entitled (his "bundle of rights") upon acquisition of the property are necessarily limited by both the scope of the title upon acquisition and reasonable expectations the property owner must have with respect to additional exercise by the State of its police power. *Id.* at 2800-2900. As Smith's expectations were limited by the fact that his title only encompassed one parcel, his "bundle of rights" did not include the right to twenty lots.

It is immaterial whether the merger statute was "new" to

California; the novelty of the statute is not "critical" to a "taking" analysis. Smith purchased the property with notice that it was one lot, not twenty, and made no "meaningful" application to subdivide it.

D. The Merger Did Not Destroy The Existence Of Twenty Lots; Del Mar Merely Enforced A Valid Merger Of Property Which Included Substandard Lots.

Smith argues that twenty lots were "taken" due to the merger. However, both the trial court and the Court of Appeal properly considered the property as a whole. Smith has failed throughout to demonstrate any legal basis upon which he believed he had a right to twenty parcels, other than that he owned twenty acres of land. As stated by the Supreme Court in *Penn Central Transp. Co. v. New York City,* 438 U.S. 104, 98 S. Ct. 2646, 57 L. Ed. 2d 631, *rehg. denied,* 439 U.S. 883 (1978):

> "Taking" jurisprudence does not divide a single parcel into discrete segments and attempt to determine whether rights in a particular segment have been entirely abrogated. In deciding whether a particular governmental action has effected a taking, this Court focuses . . . on the nature and extent of the interference with rights in the parcel as whole . . . .

Id. at 130-131. Based on the above, the "property" to be considered in determining whether the merger constituted a condemnation is the single legal parcel purchased, developed and used as a single-family estate. Del Mar merely enforced a valid merger of property which included substandard lots.

E. There Was No Destruction Of *All* Economically Viable Use; Smith Cannot View His Property As Twenty Unusable Lots, But Rather As One Lot With Economically Viable Use.

Smith's last point is that through merger he lost all economically viable use of twenty lots, which were "destroyed" and rendered "nonexistent", entitling him to compensation. His position is without merit, because not only does he have only one lot, as purchased, but even that one lot has economically viable uses without being subdivided.

Smith objects that the economically viable uses recognized by both the trial and appellate courts herein were rejected by the court in *First Lutheran I, supra.* That objection is incorrect. On remand in *First Lutheran II,* at 1367-1371, the appellate court confirmed that "all" means "all", that is, if the subject property, a 21-acre private campground called Lutherglen, could still be used for the camping facilities permitted at the time of purchase, then an ordinance prohibiting construction of structures on campground land would not constitute a regulatory taking.

The trial court herein was guided by the above decisions in finding that Smith had not been deprived of all economically viable use. (App. K-8-12). Smith cites no valid authority for his claim that economically viable use is dependent on his having twenty lots instead of one. No taking occurred because Smith had economically viable use of his property at all times.

CONCLUSION

For the foregoing reasons, Del Mar respectfully requests that Smith's Petition for Writ of Certiorari be denied.

Respectfully submitted,

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APPENDIX

Note: The sole item appended herein is a copy of 62 Ops. Cal. Atty. Gen. 281 (1979), which is referred to by both Petitioner James E. Smith in his Petition for Writ of Certiorari and by the California Court of Appeal, Fourth Appellate District, Division One, in its unpublished opinion (Appendix to Petitioner James E. Smith's Petition for Writ of Certiorari, at E-13-14). While Respondent City of Del Mar does not refer to said Opinion in its Brief in Opposition, it is appended for the convenience of this Court in its determination of whether to grant the writ of certiorari.

APPENDIX A — ATTORNEY GENERAL'S OPINION

Opinion No. CV 78-135 — May 25, 1979

SUBJECT: MERGER AND UNMERGER OF PARCELS — Parcels that were merged under the provisions of Government Code section 66424.2 as originally enacted may be deemed unmerged by local ordinance pursuant to the 1977 amendment of the statute.

Requested by: SENATOR, 38TH DISTRICT

Opinion by: GEORGE DEUKMEJIAN, Attorney General
Rodney Lilyquist, Jr., Deputy

The Honorable William A. Craven, Senator for the 38th District, has requested an opinion on the following questions:

1. Did parcels that were eligible for development on January 1, 1977, under the provisions of an existing local ordinance meet the condition of merger in Government Code section 66424.2 as originally enacted?

2. Do parcels that are eligible for development under the provisions of an existing local ordinance meet the conditions of merger in Government Code section 66424.2 as amended?

3. What kinds of parcels, if any, were unmerged by the 1977 amendment of Government Code section 66424.2?

4. May parcels merged by the original enactment of Government Code section 66424.2 be deemed unmerged by local ordinance pursuant to the 1977 amendment of the statute?

Appendix A

The conclusions are:

1. Parcels that were eligible for development on January 1, 1977, under the provisions of an existing local ordinance did not meet the conditions of merger in Government Code section 66424.2 as originally enacted.

2. Parcels that are eligible for development under the provisons of an existing local ordinance do not meet the conditions of merger in Government Code section 66424.2 as amended.

3. No parcels were expressly unmerged by the provisions of the 1977 amendment of Government Code section 66424.2.

4. Parcels that were merged under the provisions of Government Code section 66424.2 as originally enacted may be deemed unmerged by local ordinance pursuant to the 1977 amendment of the statute.

ANALYSIS

The four questions presented for analysis concern the proper interpretation of Government Code section 66424.2.[1] The statute was enacted effective January 1, 1977, and was amended by the Legislature effective July 7, 1977. It covers the conditions under which contiguous parcels of land held by the same owner are merged or are deemed unmerged for purposes of the Subdivision Map Act. (§§ 66410-66499.37 (hereinafter "Act").)

In general terms, the Act provides for a rational and orderly means by which land can be divided, developed, and improved. It

1. All unidentified section references hereinafter refer to the Government Code.

accomplishes this purpose by requiring, with few exceptions, that any division of land be shown on a map approved by the local governing agency. If the division and proposed development will create the need for access, drainage, utilities, and other services, the local agency may condition the approval of the division upon such improvements being made by the subdivider. (See *Bright v. Board of Supervisors* (1977) 66 Cal. App. 3d 191, 193-194; 61 Ops. Cal. Atty. Gen. 299, 300 (1978); 3 Witkin, Summary of Cal. Law (8th ed. 1973) Real Property, §§ 22-24, pp. 1788-1792; 2 Odgen's Revised Cal. Real Property Law (1975) §§ 25.1-25.2, pp. 1204-1206.)

Procedurally, if the land division results in four or fewer parcels, a "parcel" map is normally required; a "final" map involving stricter requirements is generally necessary for a division resulting in five or more parcels. (§§ 66426, 66428; *Bright v. Board of Supervisors, supra*, 66 Cal. App. 3d 191, 195; 4 Miller & Starr, Current Law of Cal. Real Estate (1977) §§ 24:33-24:35, pp. 60-68; 9 Hagman & Volpert, Cal. Real Estate Law Practice (1978) § 290.03, pp. 290:6.2-290:8.)

Within this statutory scheme, the issue of whether certain parcels "merge" under the provisions of section 66424.2 can become significant. For example, a landowner may acquire a parcel next to his and subsequently desire to sell it. If the two parcels have merged for purposes of the Act because of their common ownership, the owner may be required to obtain approval of a parcel map[2] before being allowed to convey the second parcel.

The first question concerns the conditions that were necessary

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2. Section 66428 allows a local agency to waive the requirement for a parcel map under certain conditions.

for the statutory merging of parcels between January 1, 1977, and July 7, 1977, the period during which section 66424.2 was in effect as originally enacted. Specifically, the issue is whether parcels merged that did not meet the numerical specifications established by local ordinance for a minimum parcel size but did meet an alternative standard unrelated to the parcels' physical dimensions. An example would be a city ordinance for a particular zone of the city that (1) established a 5000 square feet minimum parcel area, but (2) allowed development of a residential dwelling on a parcel regardless of size if the parcel had a separate parcel number on a recorded subdivision map. Under such a city ordinance, the owner of a "substandard" parcel of 4000 square feet could build a residential dwelling if the parcel had a separate subdivision map number. We conclude that if parcels were eligible for development by local ordinance during the period section 66424.2 was in effect as originally enacted, the parcels were not subject to the statute's merger provisions.

As enacted effective January 1, 1977, section 66424.2 provided in pertinent part:

> ". . . two or more contiguous parcels or units of land which have been subdivided under the provisions of this division or any prior law regulating the division of land or a local ordinance enacted pursuant thereto shall not merge by virtue of the fact that such contiguous parcels or units are held by the same owner and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease or financing of such contiguous parcels or units, or any of them;

except that, *if any one of such contiguous parcels or units held by the same owner does not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance of the local agency and at least one of such contiguous parcels or units is not developed with a building for which a permit has been issued by the local agency, then such parcels shall be merged for the purpose of this division* (unless a local ordinance specifically exempts such parcels from merger in such circumstances). . . ." (Emphasis added.)

In construing section 66424.2, we are guided by several principles of statutory construction. The cardinal rule is to "ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Select Base Materials v. Board of Equal,* (1959) 51 Cal. 2d 640, 645; accord, *Cossack v. City of Los Angeles* (1974) 11 Cal. 3d 726, 732.) Legislative intent is determined first by turning to the words used in the statute, giving them effect according to their usual and ordinary meaning. (*Moyer v. Workmen's Comp. Appeals Bd.* (1973) 10 Cal. 3d 222, 230; *Steilberg v. Lackner* (1977) 69 Cal. App. 3d 780, 785.) While words should not be added to a statute where its meaning is unambiguous (*Great Lakes Properties, Inc. v. City of El Segundo* (1977) 19 Cal. 3d 152, 155), absurd results should be avoided if possible. (*Nightingale v. State Personnel Board* (1972) 7 Cal. 3d 507, 513; *Rosenthal v. Hansen* (1973) 34 Cal. App. 2d 754, 756.) An exception contained in a statute is to be strictly construed in favor of the general rule. (*City of National City v. Fritz* (1949) 33 Cal. 2d 635, 636; *Marrujo v. Hunt* (1977) 71 Cal. App. 3d 972, 977.)

Appendix A

In enacting section 66424.2, the Legislature's apparent general purpose was to make clear that parcels did not merge for purposes of the Act if they had been created in compliance with existing subdivision laws and regulations. In effect, the statute reversed an erroneous conclusion reached in 56 Ops. Cal. Atty. Gen. 509, 512-513 (1973), and codified the conclusion reached in 59 Ops. Cal. Atty. Gen. 239, 241 (1976), where we stated:

> ". . . a construction that any two contiguous parcels properly created under the Map Act are merged into one parcel wherever held under one ownership does not generally further the purposes of the Map Act where the local agency had previously considered and approved the division. Thus, the sale or lease or financing of any parcel or parcels for a subdivision created in compliance with the Map Act is lawful without the necessity of filing a new parcel map because no new division is created. Based on these considerations, the conclusion follows that the Subdivision Map Act does not require a parcel map for the construction of a building toward sale, lease, or financing of a parcel for which a map thereof has already been recorded in accordance with law. Cf. 56 Ops. Cal. Atty. Gen. 496 (1973). A parcel once recorded under the Subdivision Map Act need not be re-recorded so long as it is not further divided."

The legislation, however, also provided for an exception to the general nonmerger rule. It established the following limited conditions for the merger of parcels created in compliance with

existing subdivision laws and regulations: (1) the parcels must be contiguous, (2) they must be held by the same owner, (3) one of the parcels must not conform to locally established standards for minimum parcel size to permit use of development, (4) one of the parcels must not be developed with a building for which a building permit was issued, and (5) local ordinances must not exempt the parcels from merger.

The critical words of the statute for purposes of analyzing the first question are: "does not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance of the local agency." In the example given, the minimum parcel size standard in terms of numerical specifications was established by the city at 5000 square feet. Use or development, however, was permitted under certain conditions without regard to this minimum measurement standard.

It may be argued that "exceptions" to established measurement standards for minimum parcel size do not create new "standards" for determining minimum size. On the other hand, it can be argued that the "standards" under section 66424.2 need not refer only to specific numerical measurements.

We believe that this is an extremely close question. A "standard" is commonly defined as a rule used to determine a quantity or quality for a specific purpose. (See Webster's New Internat. Dict. (3d ed. 1966) p. 2223.) Generally, no requirement is made that the standard establish a specific numerical criterion. We can find no expression of legislative intent to support a restrictive interpretation of the word "standards" in section 66424.2.

. Moreover, it would appear anomalous for the Legislature to act contrary to the general purpose of the statute when parcels are

initially created with the approval of the local agency *and* may otherwise be used and developed under existing local regulations. We do not believe that the Legislature would purposely take control from the local agency in such circumstances without expressly so providing.

In addition, as previously noted, we must strictly construe the merger exception language of section 66424.2 in favor of the general nonmerger rule. Consequently, a liberal interpretation of the phrase "standards for minimum parcel size" is appropriate.

Accordingly, a city ordinance may provide that a parcel is of minimum parcel size to permit use or development if it (a) contains a total area of 5000 square feet or (b) has a separate number on a recorded subdivision map. The latter alternative is a standard "for minimum parcel size" although not specified in terms of the physical dimensions of the parcel. Given that a parcel with a subdivision map number must necessarily have some "size," the alternative standard establishes a size criterion that is flexible in terms of actual dimensions but specific in terms of the test to be applied.

Consequently, we believe that between January 1, 1977, and July 7, 1977, a local ordinance could have established "standards for minimum parcel size to permit use or development" under section 66424.2 by referring to factors other than numerical measurements. Allowing use or development of any parcel that has been duly subdivided and recorded would have been such a "standard" for minimum parcel size.

The conclusion to the first question, therefore, is that parcels did not meet the conditions for merger under section 66424.2 as enacted effective January 1, 1977, if they were then eligible for use or development pursuant to an existing local ordinance.

Appendix A

The second question restates the first question except that it refers solely to the 1977 amendment of section 66424.2. Hence, we must determine whether the statute was changed concerning the conditions specified for merger, particularly with regard to the issue of possible use or development of "substandard" parcels. We conclude that no changes were made that would require a different conclusion.

The amendment continued the general provisions as to when parcels were not merged for purposes of the Act. The major change in the statute was to shift complete control over the merger of substandard parcels to the local agencies. Although the statute specified the conditions under which merger *could* occur, it no longer merged the parcels under its own terms; rather, it authorized local agencies to merge by ordinance those parcels meeting the given requirements.

Although minor changes were made in the conditions under which merger could occur, the requirement that one of the parcels "not conform to standards for minimum parcel size to permit use or development under a zoning, subdivision or other ordinance of the local agency" remained the same. Our analysis of the first question is thus applicable to the second question.

The conclusion to the second question, therefore, is that parcels do not meet the conditions of merger in section 66424.2 as amended effective July 7, 1977, if they are eligible for use or development under an existing local ordinance.

The third question concerns the types of parcels, if any, that were unmerged by the 1977 amendment of section 66424.2. We conclude that no parcels were unmerged by the amendment.

Appendix A

As previously mentioned, the 1977 amendment continued the general language of the enactment concerning when parcels did not merge for purposes of the Act. It also provided additional circumstances under which merger would not occur for purposes of the Act. We do not view these general provisions as a change in the statutory scheme so as to cause the unmerging of previously merged parcels. Instead, the plain language of the statutory amendment indicates only a legislative intent to clarify existing law and to shift complete control over the merger of substandard parcels to the local agencies.

The conclusion to the third question, therefore, is that the 1977 amendment of section 66424.2 did not specifically unmerge any particular parcels of property.

The fourth question concerns whether, under the 1977 amendment of section 66424.2, local agencies may unmerge parcels that were merged by the Legislature in enacting the statute in its original form. We conclude that they may.

The statute now provides by amendment: "A local agency may, by ordinance, deem any or all parcels or units of land which merged prior to the effective date of the 1977 amendments to this section, unmerged and separate parcels." We believe this language to be unambiguous as to legislative intent. The Legislature recognized that it had merged certain parcels by the original enactment of section 66424.2 and determined that local agencies should be able to reverse the process after the effective date of the statutory amendment.

The conclusion to the fourth question, therefore, is that for purposes of the Act, any parcels that were merged by the original enactment of section 66424.2 may be deemed unmerged by

ordinance of a local agency pursuant to the 1977 amendment of the statute.